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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

LIECHTENSTEIN*

[3 September 1998]

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* The initial report submitted by the Government of Liechtenstein is contained in document CAT/C/12/Add.4; for its consideration by the Committee, see documents CAT/C/SR.195 and 196/Add.2-4 and Official Records of the General Assembly, fiftieth session, Supplement No. 44 (A/50/44), paragraphs 80-85.

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Annex: Liechtensteinesches Landesgesetzblatt (152.31)*

* The annex may be consulted in the files of the Office of the United Nations High Commissioner for Human Rights.

Introduction

1. Liechtenstein ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 2 November 1990. The Convention entered into force for Liechtenstein on 2 December 1990. Liechtenstein's initial report (CAT/C/12/Add.4) was considered by the Committee against Torture on 10 November 1994 (CAT/C/SR.195 and 196).

2. Given the complementary nature of the initial report and the first periodic report, the present report contains numerous references to the initial report. Part II refers in addition to the comments made by the delegation of Liechtenstein on the occasion of the examination of the initial report by the Committee against Torture.

3. The original of the report, which is written in German, was approved by the Government of the Principality of Liechtenstein at its meeting of 3 June 1998. It covers the period from November 1994 to April 1998.

I. INFORMATION ON NEW MEASURES AND DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Article 2

4. In the reporting period, neither penal nor disciplinary complaints by prisoners against the police or prison personnel were recorded. The Government is also not aware of any complaints of mistreatment by prisoners.

5. The information contained in paragraphs 12-15 of the initial report remains valid.

Article 3

6. Liechtenstein is a party to the Convention relating to the Status of Refugees of 28 July 1951 and its Protocol of 31 January 1967. The Convention influenced Liechtenstein's asylum policy in the past, above all through the definition of the concept of refugee and the establishment of the principle of non-refoulement. However, since the Convention contains no rules concerning the granting of asylum, and also no corresponding procedural provisions, and the application of the existing legal provisions concerning the residence and settlement of foreigners proved too unflexible for the asylum policy, the Government of Liechtenstein established, on the basis of a parliamentary initiative at the end of 1994, a working group to draft an asylum and refugee act.

7. In the context of the preparation of the draft of the act, numerous experts were consulted, including representatives of the Expert Commission of the Council of Europe on Refugee Questions (CAHAR) and the Office of the United Nations High Commissioner for Refugees (UNHCR). The act itself provides in a number of provisions for cooperation with UNHCR (see article 92 and article 93.4).

8. The act regulates on the one hand the principles for the granting of asylum and on the other hand the principles for temporary protection. These are legally distinct subjects, each calling for its own procedure.

9. The provisions relating to the granting of asylum regulate, inter alia, the regular asylum procedure, which can be invoked by individuals. The persons in question have to prove, or at least to provide credible evidence, that they are refugees. The act seeks to ensure the shortest possible duration of the procedure.

10. A second focus of the act is temporary protection. This affords the possibility of temporary admission being granted to groups of people who have fled their home country as a result of an armed conflict. The Government of Liechtenstein had already followed the same practice in previous years. The new act now provides a legal basis for this temporary protection. The arrangement provided for in the act assumes that these people will as a rule return after a given time to their homes. 1/ In connection with temporary protection, no regular asylum procedures, and also no individual verifications, are conducted. This arrangement also reduces the pressure on the normal asylum procedure. During temporary protection, possible regular asylum procedures involving individuals of the protected group are suspended. Once the temporary protection has lapsed, an application can, however, be made for asylum insofar as there are grounds for persecution.

11. The act provides for the establishment of a reception centre where applicants for asylum are questioned, and refugees are also accommodated until their situation is clarified. By reason of Liechtenstein's special situation, particularly the small size of the country, refugees should as a rule be accommodated in the reception centre until the procedure is completed. Thus provision for the reception centre to be divided into two sections is made: one section for the short-term accommodation of applicants for asylum, and one section where applicants for asylum can also be accommodated for several weeks and even months where the duration of the procedure so necessitates. Possibilities are also provided for, however, of special cases, for example, families or women with children, being housed in another accommodation for the duration of the procedure. The most important tasks and functions of the reception centre include recording personal details, inquiring as to the route taken and the grounds for asylum, and instructing applicants for asylum in their rights and duties. This instruction is required to take place in the language the applicants for asylum understand.

12. A person applying for asylum must within 20 days after submission of the application be questioned in detail regarding the grounds for asylum, if necessary with the involvement of an interpreter. In principle, any person applying for asylum is heard in the presence of a representative of one of the relief organizations recognized by the Government unless he or she waives the right to be so accompanied. The person applying for asylum can be accompanied simultaneously by a representative and an interpreter of his or her choice, who, however, may not themselves be applicants for asylum.

13. In view of the significance of the principle of non-refoulement for the law relating to refugees, this principle is explicitly embodied in the new act

(see article 3), although it is already binding for Liechtenstein on the basis of the Geneva Convention. The act also provides that no person may be compelled in any way to emigrate to a country in which his or her life or freedom may be endangered or in which there is a danger that he or she may be compelled to emigrate to such a country. This protection against refoulement is in particular supplemented by the provisions of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which are directly applicable in Liechtenstein.

14. The Acceptance of Applicants for Asylum and Persons in Need of Protection Act was approved by Parliament in April 1998. It is expected to enter into force in mid-1998.

Article 4

15. The information contained in paragraphs 17-21 of the initial report remains valid.

Article 5

16. The information contained in paragraphs 22-23 of the initial report is still valid.

Article 6

17. The information contained in paragraphs 24-30 of the initial report can be supplemented as follows.

18. In implementation of Security Council resolutions 827 (1993) and 955 (1994) on cooperation with the international tribunals established to prosecute persons responsible for serious violations of international humanitarian law committed, in the case of the first resolution, on the territory of the former Yugoslavia since 1991, and in the case of the second, in the territory of Rwanda and by Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, the Government of Liechtenstein intends to submit to Parliament in 1998 draft legislation on cooperation with these two tribunals. The relevant preparatory work is currently under way.

Article 7

19. The information contained in paragraphs 31-34 of the initial report remains valid.

Article 8

20. Reference may be made to the information contained in paragraphs 35-39 of the initial report.

Article 9

21. The information contained in paragraphs 40-41 of the initial report can be supplemented by reference to the intended enactment of a law on cooperation with the international tribunals to prosecute serious violations of international humanitarian law (see paragraph 18).

Article 10

22. Reference may be made to paragraphs 42-46 of the initial report. Given that during the reporting period no cases of torture or other cruel, inhuman or degrading treatment or punishment have occurred in Liechtenstein, the existing practice of prevention will be continued.

Article 11

23. The information contained in paragraphs 47-50 is still valid. 2/ It may be supplemented as follows.

24. The report of the European Committee for the Prevention of Torture (CPT) on its visit in 1993 of the prison in Liechtenstein was published in May 1995 together with the comments of the Government of Liechtenstein on the recommendations made in the report. By approving the publication of the report, the content of which is, according to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, in principle confidential, the Government of Liechtenstein enabled the public to inform itself about prison conditions in Liechtenstein. In August 1995 the CPT was informed of the measures that had been taken to implement the Committee's recommendations. These include in particular a staffing increase in order to improve round-the-clock attention to the inmates (24 hours a day), and the extension of the legally prescribed minimum visiting time. Further measures relate to the possibility of engaging in regulated work within the prison with corresponding income-earning possibilities, the possibility of keeping oneself informed or entertained on a daily basis by means of television, and the possibility of physical exercise.

25. The system of regular monitoring of prison conditions by the European Committee for the Prevention of Torture serves to maintain or improve protection against torture and other cruel, inhuman or degrading treatment or punishment. With a view to the further development of cooperation between the Committee and Governments, regular meetings take place between the Committee and national officials.

Article 12

26. The information contained in paragraph 51 of the initial report remains valid. During this reporting period as well, no relevant cases have occurred.

Article 13

27. The information contained in paragraphs 52-59 of the initial report can be updated by the statement that in this reporting period as well, there was no need for the application of article 13 of the Convention.

Article 14

28. Reference may be made to the information contained in paragraphs 60-67 of the report. Additional details are to be found in part II of the present report. The provisions of article 14 have also not been applied during this reporting period.

Articles 15 and 16

29. The information contained in paragraphs 67-71 of the initial report is still valid.

II. ADDITIONAL INFORMATION REQUESTED BY THE COMMITTEE

30. In conformity with the guidelines issued by the Committee against Torture (CAT/C/14), the following paragraphs contain information on the issues raised by members of the Committee during its examination of the initial report at the Committee's 195th and 196th meetings, on 10 November 1994 (CAT/C/SR.195 and CAT/C/SR.196/Add.2). The sequence of the answers follows the numbering of the paragraphs in the summary records of the meetings.

31. Some of the questions were already answered orally by the delegation of Liechtenstein at the 196th meeting. The answers are to be found in the relevant summary record (CAT/C/SR.196/Add.2). The following information is intended to supplement and update the answers already given.

SR.195, paragraph 27

32. Judges in Liechtenstein are chosen by the Government, nominated by Parliament and finally appointed by the Prince. The appointment is valid until retirement. Dismissal or removal from office is possible only on the basis of disciplinary measures or measures under penal law. No such cases have yet occurred.

33. The public prosecutor and the judges (the court) are to be regarded, on the basis of the separation of powers, as fully independent of one another. There is neither a de jure nor a de facto connection between the two.

SR.195, paragraph 28

34. This question is comprehensively answered in SR.196/Add.2, paragraph 9. In accordance with the monistic system in force in Liechtenstein, the definition of the concept of "torture" contained in the Convention against Torture is directly applicable. In the case of a conflict between national law and international law, the principle also applies that international law takes precedence over national law. There are, however, no such conflicts in the case of the Convention against Torture.

SR.195, paragraph 29

35. It may be noted that the persons held in custody for 18 or 40 days pursuant to article 16, paragraph 4, of the European Convention on Extradition of

28 October 1969, to which Liechtenstein is a State party, enjoy the same rights as all other prisoners. Thus, they are not subject to limitations of any kind, specifically with respect to care, medical attention and possibilities of contact with their relatives or counsel for their defence. They are restricted in their freedom of movement (detained) only within the meaning of the grounds for custody with which they are charged on the basis of the request for extradition.

36. Under the terms of the Mutual Assistance Act, custody may be ordered only when there are sufficient grounds for assuming that a person arrested in Liechtenstein has committed an extraditable offence. Once the person to be extradited has been heard by the court of first instance, the public prosecutor demands the submission of a report to the Government. The Government then asks the State in which the offence was committed whether extradition is requested. An appropriate time has to be determined for submission of a request for extradition. If a request for extradition is not submitted in good time, the Government is required to so inform the court. On the basis of the notification that the request for extradition has not been submitted in good time, the court of first instance has to release the person being held in custody immediately, unless the public prosecutor simultaneously applies for a detention order.

37. Judicial hearing of the person to be extradited is regulated exhaustively in the Mutual Assistance Act. The court of first instance has to grant the person to be extradited a hearing in connection with the request for extradition. It also has to inform the person of his right to avail himself of the services of defence counsel or to apply for the holding of a public hearing in the court of second instance. Whether the documentation relating to the extradition indicates a reasonable suspicion that the person to be extradited committed the offence with which he is charged is to be verified only insofar as substantial doubts exist, particularly when evidence is available or is proffered that could invalidate the suspicion without delay.

38. If the person to be extradited does not choose defence counsel or is not in a position to do so, the court of first instance ex officio assigns him defence counsel if this is necessary in order to protect his interests.

39. Upon completion of any necessary inquiries, the court of first instance is required to submit the documentation to the court of second instance with a substantiated opinion as to whether the extradition is admissible.

40. The court of second instance decides on the admissibility of extradition in a closed meeting unless either the public prosecutor or the person to be extradited has requested a public hearing and such a hearing does not also appear necessary in order to determine the admissibility of the extradition.

41. The Government verifies the extradition procedure conducted and its outcome on the basis of the records submitted to it and the documentation in its possession or that the relevant international agreements and the principles of international legal relations have been complied with and the public order or other substantial interests of the Principality of Liechtenstein have not been prejudiced. In so doing, the Government also has to pay particular attention to whether sufficient account has been taken of the obligations of the Principality of Liechtenstein under international law, particularly in the area of the law of asylum and the protection of human rights and human dignity.

SR. 195, paragraph 30

42. Reference may be made to the answers given in SR.196/Add.2, paragraphs 11 and 16. With respect to the right of victims of torture to medical and psychological treatment, it may be noted that all prisoners in Liechtenstein are covered by compulsory health insurance which pays for the services of doctors and psychologists.

SR.195, paragraph 31

43. See the comments in paragraphs 6-14 of part I of this report.

SR.195, paragraph 32

44. The current situation with respect to the applicants for asylum from Tibet is as follows: four persons have been recognized as refugees. An appeal has been lodged with the Administrative Appeals Board against the Government's rulings to the effect that in the case of the remaining individuals, the requirements for refugee status under the terms of the Geneva Convention have not been met. The decisions in this respect are still pending. Any ruling as to the possible return of these individuals will be made by the Government in a separate decision following the completion of the procedure before the Administrative Appeals Board. The Alien Registration Office has been instructed by the Government to examine the requirements for their return or their emigration to a safe third country with a large Tibetan settlement. It will work together with the Swiss Federal Office for Refugees in clarifying this matter. The provisions of the Convention against Torture, the Geneva Refugee Convention and the European Convention on the Protection of Human Rights and Fundamental Freedoms apply in this respect.

SR.195, paragraph 33

45. Reference may be made to the statements in SR.196/Add.2, paragraphs 13 and 26, and to the comments in SR.195, paragraph 39. In the past, prisoners were as a rule informed of their rights orally, when necessary through an interpreter. On the basis of the recommendations of the European Committee for the Prevention of Torture, work is being conducted on an information brochure designed to inform prisoners of their rights and duties, and in particular of the possibilities of appeal available to them. The brochure exists in draft form, and should be introduced in the course of this year. The intention is that the brochure, which is to be translated into a number of languages, should be handed out to all prisoners when they are admitted.

46. Prisoners are allowed contact with all persons. The only limitation consists in the provision that these contacts may not result in any prejudice to the purpose of detention while awaiting trial. The decision whether such contact is permissible is taken by the examining magistrate. Thus, under Liechtenstein law no one is held incommunicado, that is to say there is no form of detention in which the prisoner is cut off from all contact with the outside world. There are no restrictions on correspondence, unless the exceptional volume of the correspondence of a person imprisoned awaiting trial would impair surveillance. In such cases, only those restrictions that are necessary for unimpaired surveillance may be ordered. The law provides that letters which it is feared

would result in prejudicing the impairment of the purpose of imprisonment may be withheld. Letters from persons detained awaiting trial which arouse the suspicion that they would result in the commission of a punishable offence to be investigated not simply at the request of an interested party are always to be seized unless they are addressed to a general authority, court or other administrative body in Liechtenstein or to the European Commission on Human Rights.

47. Persons detained while awaiting trial may receive visits as often and for as long as the necessary surveillance is possible without impairing the work and order of the prison. In no case, however, may persons detained while awaiting trial be denied a visit of a quarter of an hour's duration at least twice a week.

SR.195, paragraph 34

48. The wording in paragraph 7 of the initial report "provided it lends itself to that purpose" is a statement of a general nature and refers to the legal system of Liechtenstein in general. It is to be taken to mean legislative measures which are necessary for the implementation of specific international agreements or subsections thereof, in the event that the provisions are not sufficiently precisely and specifically formulated as to be directly applicable (self-executing). Both the European Convention for the Prevention of Torture and the Convention against Torture are, however, as directly applicable agreements, an integral part of national law and accordingly require no explicit transposition.

SR.195, paragraph 35

49. With regard to detainees being held incommunicado, see also paragraph 46.

50. An accused detainee can talk with his lawyer without the presence of a court officer. If, however, the detainee is being held also or exclusively because of the risk of collusion, until he is committed for trial discussions with his lawyer may take place only in the presence of a court officer.

51. During the investigation, the accused can also avail himself of the services of a lawyer in order to protect his rights in the court documents and to execute specific legal remedies applied for by him.

52. With regard to the overall duration of custody, it should be noted that in principle, all authorities taking part in penal proceedings have an obligation to ensure that custody lasts for as short a time as possible. Temporary custody, detention pending trial and the application of less stringent measures are to be terminated as soon as the need for them no longer exists and, in the case of detention pending trial, as soon as its duration becomes clearly out of proportion to the penalty to be expected. Moreover, the duration of detention pending trial simply on the grounds of risk of collusion may not exceed two months, and the duration of such detention imposed also or exclusively for another reason may not exceed six months. On the application of the investigating magistrate or the public prosecutor, the Supreme Court may on grounds of the special difficulty or special scope of the investigation rule that the duration of detention solely on grounds of risk of complicity may be up to three months, of detention also or exclusively for another reason up to one year,

or when the offence in question is one which under the law is subject to imprisonment for a maximum of at least 10 years, up to two years. The time limit on detention pending trial imposed also or exclusively on grounds other than the risk of collusion is lifted once the final hearing before the criminal court has been ordered.

SR.195, paragraph 36

53. If a person present in Austria on the basis of the treaty on the accommodation of prisoners should be victim of torture or mistreatment, all necessary measures would be required to be taken by the Austrian authorities. In any event, however, the person concerned would be returned to Liechtenstein with immediate effect or brought back by the Liechtenstein authorities. The decision regarding a remission of the sentence would in such a case be taken by the Liechtenstein authorities.

54. The detained person naturally has the right both to lodge a complaint in accordance with Austrian legislation and to contact the authorities in Liechtenstein (a Liechtenstein court, the Government of Liechtenstein). Such contact may take place at any time in person, through a lawyer, clergyman or doctor, or in writing.

SR.195, paragraph 37

55. The constitutionally guaranteed right to compensation by the State in the event of unlawful arrest and arrest and sentencing of innocent persons is spelt out in the 1966 Act on the Legal Responsibility of Officials, article 3 of which reads: "public legal entities shall be liable for damage inflicted by them or by persons acting on their behalf in the course of their official duties". Accordingly, victims of torture also have the right to compensation from the State.

SR.195, paragraph 38

56. Reference may be made to the answer given in SR.196/Add.2, paragraph 17.

SR.195, paragraph 39

57. The Prison Administration annually submits to the Government a report on the situation in the national prison. In addition, under the Criminal Procedural Code the president of the court of first instance or a judge of the court designated by him is required to conduct an inspection of the prison at least once a quarter, without prior notice and in the absence of the prison governor and to arrange for the shortcomings identified on the basis of interviews with the prisoners to be remedied. In accordance with the practice to date, these inspections also include examining the treatment of persons in police custody.

58. NGOs have no legally established right to conduct inspections. In practice, however, representatives of NGOs are allowed access to the national prison at any time, particularly on the basis of a justified request. Furthermore, an additional possibility of neutral inspection and monitoring is afforded by the regular services provided by external specialists (the

Landesphysikus 3/, psychiatrists, clergymen, social workers, etc.). Any person in custody also has the right to address a request directly to the Government or to a government office at any time.

SR.195, paragraph 40

59. The decision as to whether the visits received by a person are to be regarded as likely to have a negative impact on the purpose of the detention pending trial is taken by the competent examining magistrate. The only restriction on communication with the outside world relates to the corresponding between the accused person in custody and his lawyer, which until charges are brought is subject to monitoring by the examining magistrate, but only when the accused is in custody also or exclusively on grounds of the risk of collusion.

SR.195, paragraph 41

60. Details of the penalties for murder and rape are to be found in SR.196/Add.2, paragraph 20.

SR.195, paragraph 42

61. The responsibility for implementation measures rests on the one hand with the Government (disciplinary measures) and on the other with the court (sentencing under criminal law). In practice, this means that in the case of a complaint or accusation, action is taken simultaneously and jointly by both the Government and the court. As a rule, complaints are received by the president of the court or his representative.

SR.195, paragraph 43

62. See the statements in SR.195, paragraph 33.

SR.195, paragraph 44

63. Liechtenstein has been making regular voluntary contributions to the United Nations Voluntary Fund for Victims of Torture since 1984.

Notes

1/ In the case of the individuals who left the former Yugoslavia as a result of the war, upon the expiry of the transitional protection period some of the refugees were granted resident permits on humanitarian grounds. The individuals in question also include victims of torture.

2/ The word "delusions" in paragraph 48 of the initial report should be replaced by "deception".

3/ The Landesphysikus, a doctor in private practice, serves as the national doctor of Liechtenstein, and is assigned responsibility, inter alia, for medical care of prisoners. He provides this care without instructions and on his own responsibility. If a prisoner refuses the Landesphysikus as official doctor, the prisoner has the right to consult another doctor in whom he has confidence.